

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
for the Use and Benefit of HARRIS PACIFIC
NORTHWEST, LLC,

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,
a Connecticut corporation,

Defendant.

And

WALSH CONSTRUCTION COMPANY, an
Illinois corporation,

Intervenor.

No. 3:21-cv-05285

JOINT STATUS REPORT,
STIPULATION, AND
ORDER RE CONTINUED STAY
OF PROCEEDINGS

NOTE ON MOTION
CALENDAR: OCTOBER 28, 2022

COMES NOW, Plaintiff Harris Pacific Northwest, LLC (“**Harris Pacific**”), Defendant Travelers Casualty and Surety Company of America (“**Travelers**”), and Intervenor Walsh Construction Company (individually “**Walsh**” and collectively, the “**Parties**”) through their counsel of record, to present the following stipulation for a continued stay of proceedings and a continuance of any court deadlines related to the above-captioned action.

STIPULATION AND ORDER RE STAY OF
PROCEEDINGS - 1
[CAUSE NO. 3:21-cv-05285]

OLES MORRISON RINKER & BAKER LLP
701 PIKE STREET, SUITE 1700
SEATTLE, WA 98101-3930
PHONE: (206) 623-3427
FAX: (206) 682-6234

1 The Parties stipulate to the following facts:

2 1. A Complaint was filed by Harris Pacific in the above-captioned action.

3 2. The above-entitled action concerns a Miller Act Claim for subcontract work by
4 Harris Pacific for Walsh.

5 3. The subcontract work concerns a construction project where Walsh is acting as
6 the General Contractor and for which the Department of the Navy – Naval Facilities
7 Engineering Command Northwest (“NAVFAC”) is the Owner.
8

9 4. Walsh has submitted requests for equitable adjustment to NAVFAC, hereinafter
10 referred to as the “**Owner claims**.” The Owner claims include Walsh’s own requests for
11 increased costs and time attributable to NAVFAC, and the Owner claims also include the
12 updated claim from Harris Pacific submitted to Walsh on or about April 15, 2022.
13

14 5. Travelers is the surety for Walsh’s payment bond submitted pursuant to the
15 Miller Act.
16

17 6. Harris Pacific’s claims were consolidated and submitted to NAVFAC with
18 Walsh’s own claim and claims of other subcontractors on the same project. On September 30,
19 2022, NAVFAC informed Walsh that, due to the complexity of the issues identified in the
20 claim as well as audits to be performed, the date by which a final decision will be issued to
21 Walsh is, on or before March 30, 2023.
22

23 7. The undersigned parties previously agreed to stay the above-entitled action to
24 allow for the NAVFAC Contracting Officer to issue a determination of the Owner claims.
25

26 8. Walsh notes that Article 11 of its subcontract with Harris Pacific (attached as
27 Exhibit B to Harris Pacific’s Complaint) requires the subcontractor to stay and suspend any
28

1 legal action against Walsh and Travelers until Walsh's claims against NAVFAC have been
2 adjudicated. Harris Pacific responds that such language in the subcontract cannot support
3 extension of the subcontractor's Miller Act rights for an unreasonable period of time and is
4 also conditioned upon Walsh diligently and expeditiously pursuing a pass-through claim on
5 behalf of Harris-Pacific. The parties do not believe that this issue needs to be decided by the
6 Court at this point, however, because Harris Pacific is willing to accept a further six-month
7 stay as provided herein.
8

9
10 9. The Parties further agree that by entering into this stipulation, neither Travelers,
11 Walsh, nor Harris Pacific is waiving or releasing its rights and defenses under the Miller Act
12 or under Article 11 of the subcontract, including but not limited to Walsh's contractual right
13 to arbitrate any remaining claims between Walsh and Harris Pacific.
14

15 10. By entering into this stipulation, the Parties are attempting to avoid unnecessary
16 costs and fees and neither party waives any claims, counterclaims, affirmative defenses, or
17 defenses, and all such rights are expressly reserved.
18

19 11. Based on the above facts, the Parties jointly move, stipulate, and agree to, entry
20 of an order by the Court in the above-titled action:

- 21 a. staying proceedings for six (6) months;
22 b. continuing any deadlines for six (6) months;
23 c. requiring the Parties to file with the Court, no later than six (6) months from the
24 entry of the order below, a joint report regarding the status of the Owner claims, and the Parties'
25 positions as to any further extension of the stay and continuance.
26
27
28

1 DATED this 28th day of October, 2022.

2 **AHLERS CRESSMAN & SLEIGHT**
3 **PLLC**

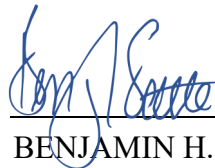
OLES MORRISON RINKER & BAKER
LLP

4 By: /s/ Lindsay Watkins
5 John P. Ahlers, WSBA #13070
6 Lindsay T. Watkins, WSBA #43012
7 Lindsay.Watkins@acslawyers.com
8 John.Ahlers@acslawyers.com
9 1325 Fourth Avenue, Suite 1850
10 Seattle, WA 98104-2573
11 Phone: (206) 287-9900
12 Fax: (206) 934-1139
13 *Attorneys for Defendant and for*
14 *Intervenor Walsh Construction Company*

By: /s/ Douglas S. Oles
Douglas S. Oles, WSBA #9366
#2105120005
oles@oles.com
701 Pike Street, Suite 1700
Seattle, WA 98101
Phone: (206) 623-3427
Fax: (206) 682-6234
Attorneys for Plaintiff

Pursuant to the above stipulation, this action and all related deadlines are STAYED for a period of six (6) months from the date of entry of this Order. No later than six (6) months from the date of entry of this Order, the Parties shall file with the Court a report regarding the status of the Owner claims referred to in the stipulation of the Parties and the Parties' positions as to any further extension of the stay.

IT IS SO ORDERED this 10th day of November , 2022.



BENJAMIN H. SETTLE
United States District Court Judge

Presented by:

**AHLERS CRESSMAN & SLEIGHT
PLLC**

**OLES MORRISON RINKER &
BAKER LLP**

By: /s/Lindsay Watkins
John P. Ahlers, WSBA #13070
Lindsay T. Watkins, WSBA #43012
Lindsay.Watkins@acslawyers.com
John.Ahlers@acslawyers.com
1325 Fourth Avenue, Suite 1850
Seattle, WA 98104-2573
Phone: (206) 287-9900
Fax: (206) 934-1139
*Attorneys for Defendant and for Intervenor
Walsh Construction Company*

By: /s/ Douglas S. Oles
Douglas S. Oles, WSBA #9366
#2105120005
oles@oles.com
701 Pike Street, Suite 1700
Seattle, WA 98101
Phone: (206) 623-3427
Fax: (206) 682-6234
Attorneys for Plaintiff